IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 880 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRUBEN WD/O MANHARBHAI ALIAS GHANSHAMBHAI G NAYKA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 880 of 2003

MR KK TRIVEDI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/05/2003

ORAL JUDGEMENT

The petitioner lady detenu has challenged her

detention order dtd.22/11/2002. By the said order, the petitioner is detained as Bootlegger under the Gujarat Prevention of Anti-Social Activities Act. Along with the said detention order, the petitioner is also served with the grounds of detention of the same date. In the said grounds of detention, there is reference of about four cases registered against the petitioner detenu under various sections of the Bombay Prohibition Act. The detaining authority has also recorded statements of witnesses and after verifying the same, the detaining authority has detained the petitioner under preventive detention. The aforesaid detention order is challenged by way of this petition at the instance of the petitioner detenu.

2. On behalf of the learned advocate for the petitioner it is submitted that the last registered offence is registered against the petitioner before North Prohi.Police Station vide CR No.2150 of 2002 under Bombay Prohibition Act on 17/7/2003 and the detaining authority has passed the detention order on 22/11/2002 and according to the learned advocate for the petitioner, there is a delay of more than four months in passing the order of detention. To substantiate the aforesaid arguments, the learned advocate for the petitioner has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

3. Learned AGP has mainly argued that the detaining authority has recorded the statements of the witnesses on 17/7/2002 and ultimately the detention order passed on 22/11//2002. She has also argued that the detaining authority has also filed affidavit in reply justifying

the detention order.

4. Having heard the learned counsel for the respective parties and considering the the documents on record, It is clear that the statements were recorded on 17/7/2002. The last offence is registered against the petitioner detenu on 17/7/2002 and the detaining authority has passed the detention ordfer on 22/11/2002 and therefore, there is a delay of more than 4 months in passing the detention ordfer which has not been satisfactorily explained by the detaining authority and it can be said that the statements have been recorded only with a view to cover up the delay. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 22/11/2002 passed against the petitioner-detenu is hereby quashed and set aside. The detenu namely Niruben widow of Manharbhai alias Ghansham Gokuldas Nayaka is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly.

(P.B.MAJMUDAR,J.)
RAFIK